

REMARKS

Claims 52-71 were presented for examination and were pending in this application. In an Office Action dated June 20, 2005, claims 52-58 and 66-71 were rejected under the judicially created doctrine of obviousness-type double patenting; and claims 52-71 were subject to restriction and an election was required. Applicant has herein cancelled claim 65. Applicants address Examiner's comments below.

I. Double Patenting

On page 2, the Office Action rejected claims 52-58 and 66-71 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3, 4, 19, and 20 of parent U.S. Patent No. 5,926,533 and claims 1-27 of parent U.S. Patent No. 6,611,583. Applicant has herein filed terminal disclaimers with respect to the '533 patent and the '583 patent. Thus, Applicant submits that the rejection under double patenting is obviated.

II. Restriction / Election Requirement

On page 3, the Office Action requires restriction by election of claims 52-58 and 66-71 or claims 59-65. More specifically, Examiner states that the field of search for claims 52-58 and 66-71 includes systems that monitor call progress tones, and that a field of search for claims 59-65 includes various fields directed to speech and voice recognition. Only dependent claim 65 includes the step of comparing a voice sample to verify that the voice sample matches a digitized representation. Applicant respectfully traverses the restriction requirement.

According to MPEP 808.02, Examiner must justify a restriction requirement by showing either: separate classification; separate status in the art; or a different field of search. However,

Examiner has not met that burden of proof by showing that independent claims 52 and 66 would have a separate classification, a separate status in the art or a different field of search from independent claim 59. Instead, Examiner relies upon additional features of dependent claim 65 which stems from independent claim 59. Moreover, because Applicant submits that independent claim 59 is patentable without the additional features of claim 65, Examiner is not required to perform additional searching with respect to claim 65.

As required, in the event the Examiner maintains the restriction requirement, Applicant elects claims 59-65. Kindly note that the field of search with respect to independent claim 59 necessarily includes the field of search of non-elected claims.

III. Conclusion

Applicant respectfully requests examination of all pending claims on their merits.

Applicant respectfully submits that the pending claims are now allowable over the cited art of record and requests that the Examiner allow this case.


The Examiner is invited to contact the undersigned in order to advance the prosecution of this application.

Respectfully submitted,
JAY L. GAINSBORO

Dated: _____

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By: _____


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